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**UNITED STATES DISTRICT COURT**

District of Utah, Central Division

James L. Driessen and Marguerite A Driessen	)	
	)	
Plaintiffs	)	
	)	
	)	PLAINTIFFS' DISCLOSURE OF
	)	PROPOSED TERMS FOR
	)	CONSTRUCTION
V.	)	
	)	
Sony BMG Music Entertainment et.al.	)	
	)	
Defendants	)	
	)	CASE NUMBER: 2:09-cv-00140
	)	Judge: Dale A. Kimball

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Pursuant to the scheduling order agreed to by the parties, Plaintiffs provide their PLAINTIFFS' DISCLOSURE OF PROPOSED TERMS FOR CONSTRUCTION, a copy of which is being electronically filed with the Court. Plaintiffs presently contend that Defendants collectively and/or individually through the making, using, offering to sell, and/or selling the Sony Platinum Music Pass, along with its associated services or digital content, infringe claims 1- 4, 7, 10, and 12-15 of U.S. Patent No. 7,003,500 ("the '500 Patent"). Elements of claims 1-4 and claim 7 invoke the 6<sup>th</sup> paragraph of 35 USC 112 interpretations for claim construction.

**INITIAL DISCLOSURES**

In keeping with the tradition of *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), Plaintiffs submit to the holding that construction of patent claims, including terms of art within its claim, is exclusively within the province of the court.

Therefore Plaintiffs propose to the court that the claim terms carry their “accustomed” meaning to the “relevant community” at the “relevant time” of invention and persuade that the courts may “rely on dictionary definitions when construing claim terms” and that “[d]ictionaries . . . are often useful to assist in understanding the commonly understood meaning of words.” *Free Motion Fitness, Inc. v. Cybex Intern., Inc.* 423 F.3d 1343 (Fed. Cir. 2005), (on appeal from Utah 10<sup>th</sup> Cir., quoting *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) at 1322, quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 n.6 (Fed. Cir. 1996)).

In this initial disclosure, Plaintiffs seek to obtain the proper meaning from context of individual words, but context within the specification and claims and as required in differentiation from claim to claim may necessitate alternate meanings. “In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.” *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003). Limited modifications and/or agreements to the below proposed terms of construction may be sought as opposing sides confer.

#### **NOTE ON CLAIM PREAMBLES**

A claim preamble has the import that the claim as a whole suggests for it.” *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995). “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the

balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). See also *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1333, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003).

"In the parlance of patent law, the transition 'comprising' creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional, unrecited elements." *Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001).

#### INITIAL PROPOSED TERMS OF CONSTRUCTION

<b><u>Claim Term(s)</u></b>	<b><u>Proposed Construction</u></b>
customer	entity that purchases a commodity or service
access	permission, liberty, or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing.
point	a particular place or locality
at	presence or occurrence in, on, or near
retail	the industry of selling of commodities or goods in small quantities to ultimate consumers.
of	word to indicate relationship between a result determined by a function or operation and a basic entity or to indicate something from which a person or thing is delivered
sale (selling)	the act of transferring property from one person to another for a price
establishment	a public or private institution or place of business or residence that may include its furnishings and staff
URL	the address of a resource (as a document or Web site) on the Internet that consists of a communications protocol followed by the name or address of a computer on the network and that often includes additional locating information (as directory and file names)—called also uniform resource locator, universal resource locator
information	the communication or reception of knowledge or intelligence through a signal or character (as in a communication system or computer) representing data
that	the one : the thing : the kind : something, anything
is	present singular of "be."

an	one or more
Internet	an electronic communications network that connects communication devices, computers, networks, or organizational computer facilities around the world
transaction	something transacted; especially an exchange or transfer of goods, services, or funds such as electronic transactions
location	a position or site occupied or available for occupancy
said	Aforementioned
itemized	to set down in detail or by particulars : list
merchandise	the commodities or goods that are bought and sold in business : wares
or	an alternative <coffee or tea> <sink or swim>, the equivalent or substitutive character of two words or phrases <lessen or abate>, or approximation or uncertainty <in five or six days>
downloadable	able to transfer as data or files from one computer to the memory of another device (such as a another computer)
media material objects	the physical object or space in which a copyrighted work is embodied such as a book, manuscript, tape, disk, compact disk, DVD, hard disk space, memory stick, etc. – the copyright ownership and ownership of the material object in which the copyrighted work is embodied are two entirely separate legal entities.
means for	invokes 6 <sup>th</sup> paragraph of 35 USC 112 interpretation
accepting	to receive willingly by being able or designed to take or hold (something applied or added)
payment	the act of paying something or the something that is paid.
through	to indicate means, agency, or intermediacy such as by means of, by the agency of, because of, or by common descent from or relationship with.
in person	in the bodily appearance of one or more human beings
with	to indicate a participant in an action, transaction, or arrangement
a	one or more
customer	entity that purchases a commodity or service
wherein	in which, where, during which, or in what way  “wherein” does <i>not</i> modify claim elements in a way to disturb preamble recitation of “comprising” See Notes on Preamble above, citing <i>Crystal Semiconductor Corp. v. Tritech Microelectronics Int’l, Inc.</i> , 246 F.3d 1336, 1348 (Fed. Cir. 2001)
designated	to indicate, set apart, or distinguish for a specific purpose

for	as being or constituting or indicating an actual or implied enumeration or selection
purchase	to obtain by paying money or its equivalent (to buy)
storing	to place or leave in a location (as a warehouse, library, or computer memory) for preservation or later use or disposal
retrieving	to get and bring back; especially to recover (as information) from storage
record(ing)	to set down in writing or as sound, visual images, or data to be registered on something (as a disc or magnetic tape) in reproducible form.
on	to indicate position in contact with or supported by the surface of.
in	to indicate inclusion, location, or position within limits
physical	having material existence or perceptible especially through the senses and subject to the laws of nature.
medium	something (such as a paper, card, or magnetic disk) on which information may be stored
corresponding	to be in conformity with, agreement with or matched to.
to	to indicate addition, attachment, connection, belonging, possession, accompaniment, or response
transfer	to convey, move, shift, or cause to pass from one person, place, or situation to another
authorization	the act of establishing as if by a person or entity in power to influence or command
actuated	to put or move into action or motion
from	to indicate the source, cause, agent, or basis
ownership	the state, relation, or fact of – having or holding something as tangible or intangible property
rights	qualities of adherence to lawful authority that constitutes propriety or merit to which one has a just claim or to which one is justly entitled
preselected	to choose in advance usually on the basis of a particular criterion
transfer(red)	to convey or cause to pass from one person, place, or situation to another
through	to indicate means, agency, or intermediacy by means of, by the agency of, because of, or by common descent from or relationship with.
store	<ol style="list-style-type: none"> <li>1. to place or leave in a location (as a warehouse, library, or computer memory) for preservation or later use or disposal.</li> <li>2. a business establishment where usually diversified</li> </ol>

	goods are kept for retail sale
convenience store	a small often franchised market that is open long hours
vending machine	a coin-operated machine for selling merchandise
parking lot	an area used for the parking of motor vehicles
hallway	an entrance hall or corridor
lobby	a corridor or hall connected with a larger room or series of rooms and used as a passageway or waiting room
place	physical environment: space
conduct	to convey in a channel or act as a medium for conveying or transmitting
business	commercial or mercantile activity engaged in as a means of livelihood: trade
checkout	a counter or area in a store where goods are checked out
kiosk	a small structure with one or more open sides that is used to vend merchandise that may or may not have connection to a computer network
cashier's station	the place or position in which something or someone stands or is assigned to stand or remain where moneys are received and expended or collected and recorded
self-check out	A counter or area in a store where goods are checked out through self service mechanisms
interaction	mutual or reciprocal action or influence
writing	to scratch, draw, inscribe or form as characters or symbols on a surface
inscribing	to write, engrave, or print as a lasting record
program (ed) (ing)	to code in a predetermined logic, behavior, or operation
card	a flat stiff usually small and rectangular piece of material (as paper, cardboard, or plastic) usually bearing information
diskette	floppy disk, CD, DVD, or other object capable of containing data
recording	the action or process of recording
requiring	to claim, impose, or ask for by right or authority which is suitable, appropriate, necessary, or essential
public	exposed to general view : open
computer	a programmable usually electronic device that can store, retrieve, or process data
network(ed)	an interconnected or interrelated chain, group, or system such as a system of computers, peripherals, terminals, and databases connected by communications lines
during	At a point in the course of or throughout the duration
process	a phenomenon marked by gradual changes that lead toward a particular result or series of actions or operations

	conducting to an end
whether	correlative <i>or</i> or <i>with</i> to indicate alternative conditions or possibilities
not	a logical operator that produces a statement that is the inverse of an input statement
actually	in act or in fact: really
made	to cause to happen, be experienced by, to exist, occur, or appear
price	the quantity of one thing that is exchanged or demanded in barter or sale for another such as the amount of money given or set as consideration for the sale of a specified thing
at least	at the minimum
zero	the absence of magnitude or quantity
free	not costing or charging anything
positive	real and numerically greater than zero
amount	the total number or quantity
creating	to bring into existence, produce, or bring about by a course of action or behavior
specific	those properties of something that allow it to be referred to a particular category, or restricted to a particular individual, situation, relation, or effect
product	something produced that is marketed or sold as a commodity or service
operating	to perform a function or influence to produce an effect
purpose	something set up as an object or end to be attained
represented	to serve as a sign or symbol
specifying	to name or state explicitly or in detail or to include as an item in a specification
user	one that uses
associated	to bring together or into relationship in any of various intangible ways
sending	to dispatch by a means of communication, direction, order, or request
message	a communication in writing, in speech, or by signals
response	something constituting a reply or a reaction; or an activity or inhibition of previous activity; or resulting from a given input
either	being the one or the other
directly	in a direct manner in immediate physical or logical contact
other	ones distinct from that or those first mentioned or implied
causing	to serve as a cause or occasion by efficient or non-redundant persuasion, command, authority, or force

result	to proceed or arise as a consequence, effect, or conclusion
specification	the act or process of specifying (see above)
cryptographic	of or using the enciphering and deciphering of messages in code or cipher such as computerized encoding and decoding of information
key(s)	the code or set of instructions governing the encipherment and decipherment of messages
being	the quality or state of having existence or conceivable as existing
verification	the act or process of confirming, establishing, or substantiating the truth, accuracy, or reality
authentication	to prove or serve to prove the acceptance of or belief as conforming to or based on correctness
desiring	to have or express a wish for
buy	to acquire possession, ownership, or rights to the use of products or services of by payment
granting	to consent to, allow fulfillment of, or permit as a right, privilege, or favor
prepaid	to pay or pay the charge on in advance

Disclosed to you this 23<sup>rd</sup> day of November, 2009

BY: /s/ James L. Driessen

James L. Driessen

For James L. Driessen and Marguerite A. Driessen, Plaintiffs, Pro Se



CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid, by first class mail, a true and correct copy of PLAINTIFFS' DISCLOSURE OF PROPOSED TERMS FOR CONSTRUCTION to the following addresses this 23<sup>rd</sup> day of November 2009.

For Sony, Best Buy, and Target

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